

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
)	
)	2:19-CR-19-1D
vs.)	
)	
TOBY PAINTER,)	
Defendant.)	
)	

JULY 29, 2020
ARRAIGNMENT HEARING
BEFORE THE HONORABLE ROBERT T. NUMBERS, II
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On Behalf of the Government:

JAKE PUGH, ASSISTANT U.S. ATTORNEY
U.S. Attorney's Office
150 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27601

On Behalf of the Defendant:

KATHERINE SHEA, FEDERAL PUBLIC DEFENDER
Federal Public Defender's Office
150 Fayetteville Street, Suite 450
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AMY M. CONDON, CRR, RPR, CSR
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

1 (Wednesday, July 29, 2020, commencing at 1:46 p.m.)

2 P R O C E E D I N G S

3 THE COURT: Good morning, everyone.

4 I'm United States Magistrate Judge Robert Numbers
5 here in the United States District Court for the Eastern
6 District of North Carolina sitting in Raleigh for felony
7 arraignments.

8 I'd like to begin by asking our clerk to please
9 place our interpreters under oath.

10 (The interpreters were affirmed.)

11 THE COURT: In a moment the Court will call the
12 calendar to determine if the defendants and their attorneys
13 are present.

14 Each attorney should identify him or herself and
15 state whether their client is present in the courtroom. If a
16 defendant does not have an attorney or if your attorney is not
17 present, you should answer when your name is called.

18 After the Court calls the calendar, the defendants
19 and their attorneys shall remain in the courtroom so that the
20 Court may explain to each defendant their right to a jury
21 trial and the consequences of pleading guilty.

22 After the Court completes this explanation, the
23 Court will call each case individually and determine the plea
24 the defendant wishes to enter.

25 During that process, the defendant will be placed

1 under oath and questioned individually before the Court
2 accepts any plea that they enter.

3 The defendant will be asked if he or she understands
4 their rights under the Constitution and laws of the United
5 States; and if the defendant does not, the Court will explain
6 those rights again.

7 The defendant may confer with their attorney before
8 answering any of the Court's questions.

9 Additionally, when each defendant's case is called,
10 the attorney for the Government assigned to handle the case
11 shall state whether the case involves a crime victim and
12 whether any crime victim is present or wishes to be heard.

13 At this time the Court would ask the clerk to call
14 the calendar please.

15 (Calendar call.)

16 THE COURT: All right. At this time I'm going to
17 proceed to provide a general advice of rights to each of the
18 defendants.

19 All of the defendants who are present in the
20 courtroom should pay close attention to what I'm about to say
21 because you will be called upon to make decisions in your case
22 based upon what I am about to tell you.

23 I now advise each defendant as follows: If you are
24 accused of a felony, you have the constitutional right to be
25 charged by an indictment by a grand jury. Unless you waive

1 indictment, you may not be charged in Federal Court with a
2 felony offense.

3 To be indicted by a grand jury, the grand jury must
4 find that there is probable cause to believe that you
5 committed the charged crime.

6 The grand jury consists of 16 to 23 people and at
7 least 12 grand jurors must agree that there is probable cause
8 to believe that you have committed a crime before you may be
9 indicted.

10 However, you may waive the right to a grand jury
11 indictment and you may consent to being charged by information
12 filed by the United States Attorney. If you do not waive
13 indictment, the Government may present the case to the grand
14 jury and ask the grand jury to indict you. The grand jury may
15 or may not do so.

16 If you waive grand jury indictment, the case will
17 proceed against you based on the United States Attorney's
18 information just as though you had been indicted.

19 In addition to the right to be charged by
20 indictment, the Constitution and laws of the United States
21 give you the right to plead not guilty and to have a jury
22 trial with respect to all the charges against you.

23 In that regard, you should consider the following:

24 First, at a jury trial you will be presumed
25 innocent. The Government will be required to prove your guilt

1 beyond a reasonable doubt using competent evidence. You would
2 not have to prove that you are innocent;

3 Second, at a trial, witnesses for the Government
4 will have to come to court and testify in your presence. Your
5 lawyer could cross-examine those witnesses, object to evidence
6 offered by the Government, and offer evidence on your behalf;

7 Third, at trial you would have the right to present
8 evidence and to use the subpoena power of the Court to make
9 witnesses appear and testify whether they wanted to do so or
10 not;

11 Fourth, at trial you would have the right to testify
12 if you choose to do so. You also have the right not to
13 testify. And if you choose not to testify, the Court would
14 expressly tell the jury that no inference or suggestion of
15 guilt could be drawn from your failure to testify.

16 Fifth, you have the right to be represented by an
17 attorney at trial and every other stage of your criminal
18 proceeding. If you are unable to afford an attorney, you also
19 have the right to have the Court appoint one for you. Whether
20 you plead guilty or not guilty has no effect on your right to
21 be represented by an attorney. In other words, if you want to
22 have a lawyer represent you in this court, you will have one.

23 If you plead guilty, you will waive your right to a
24 jury trial and these other rights. Instead of a trial, you'll
25 be adjudged guilty and you'll be sentenced on the basis of

1 your guilty plea after the Court considers the factors listed
2 in Title 18 of the United States Code, Section 3553(a),
3 considers any departure or variance motions, and considers the
4 now-advisory Federal Sentencing Guidelines.

5 If you have reached a plea agreement with the
6 Government, the Court is obligated to examine carefully any
7 such plea agreement to be sure that the agreement conforms
8 with the objectives of sentencing, including imposing a
9 sentence within the parameters of your statute of conviction
10 that is appropriate to the seriousness of your actual offense
11 behavior and your past criminal conduct.

12 The Court will evaluate that behavior and conduct
13 only after it receives a detailed presentence report from the
14 Probation Office.

15 If you have reached a plea agreement with the
16 Government, you also should realize the Court is not a party
17 to that plea agreement. A plea agreement is negotiated solely
18 between you, your lawyer, and the lawyer for the Government.

19 You are advised that any stipulations contained in
20 your plea agreement are not binding on the Court. Rather, the
21 Court will make an independent determination as to your
22 sentence after applying all of the sentencing factors to your
23 case and considering all arguments of counsel, your statement,
24 the advisory guideline range, and any departure or variance
25 motions.

1 A plea of guilty has the following additional
2 consequences:

3 First you will have to waive your right not to
4 incriminate yourself because the Court will ask you about what
5 you did in order to be sure that you are guilty as charged and
6 you'll have to admit your guilt in open court;

7 Second, the Court may impose the same punishment on
8 you as if you had pleaded not guilty and had been convicted by
9 a jury;

10 Third, if you're on probation or parole in another
11 case, in this or another court, by pleading guilty here your
12 probation or parole in that other case may be revoked and you
13 may be required to serve time in that other case in addition
14 to any sentence imposed as a result of your guilty plea here;

15 Fourth, in addition to any sentence imposed, your
16 plea of guilty to a felony may deprive of you valuable civil
17 rights, such as the right to vote, the right to hold public
18 office, the right to serve on a jury, and the right to possess
19 any kind of firearm.

20 Moreover, if you're not a United States citizen and
21 you are convicted in Federal Court, you may be removed from
22 the United States, denied citizenship, and denied future
23 admission to the United States.

24 Furthermore, if you're ordered imprisoned due to
25 your felony conviction, any deportation will take place after

1 your term of imprisonment ends.

2 Additionally, unless otherwise advised, each
3 defendant will be assessed a per-count sum not less than \$100
4 and any fine imposed will bear interest.

5 Fifth, in some cases obligation in addition to a
6 sentence of imprisonment and a fine may be imposed. For
7 example, you may be ordered to make restitution in the form of
8 money to any victims of your offense. Likewise, you may be
9 required to forfeit certain property to the Government. That
10 will be noted in a forfeiture notice attached to your
11 indictment or information.

12 In the case of offenses involving fraud, you may be
13 ordered to provide notice of your conviction to the victims of
14 your offenses.

15 Additionally, in most cases, a defendant will be
16 given a term of supervised release in addition to a term of
17 imprisonment. The term of supervised release follows your
18 term of imprisonment. Your release will be conditioned on
19 your non-commission of another federal, state, or local crime
20 and other such conditions as the Court imposes.

21 If you violate your conditions of release, you may
22 be subject to more time in prison.

23 Cases in which guilty pleas are tendered and
24 accepted today are set for sentencing here in Raleigh on
25 November 2nd, 2020.

1 Regardless of the advisory guideline range
2 ultimately found appropriate to your case, you may not
3 withdraw a guilty plea that is tendered by you and accepted by
4 the Court today.

5 Between now and the sentencing date, the Probation
6 Office will prepare a detailed written presentence report. It
7 is important that the presentence report be complete and
8 accurate. The presentence report will be an important tool to
9 aid the Court in determining your sentence.

10 You and your lawyer may provide information for the
11 presentence report; you and your lawyer will also receive a
12 copy of the presentence report, and you will have an
13 opportunity to make timely comments on it. You should examine
14 the presentence report carefully.

15 Within 15 days after receiving the presentence
16 report, you and your lawyer must communicate in writing to the
17 Probation Office objections you have to any information
18 contained in or omitted from the report. The Court will not
19 consider any dispute which has not been the subject of a
20 written communication.

21 Furthermore, the Court will consider and resolve
22 only issues relevant to the disputed sentencing factors
23 previously stated in writing and additionally brought to its
24 attention by you or your attorney at your sentencing hearing.

25 At sentencing each defendant should advise the Court

1 orally if you have any objection to any matter contained in or
2 omitted from your presentence report that your attorney has
3 failed to raise. Any contentions that you don't state or that
4 your lawyer does not state will be deemed abandoned.

5 Your failure to challenge the validity of any prior
6 convictions before imposition of your sentence will bar your
7 contesting those convictions at a later date. In short, if
8 you do not contest the facts set forth in the presentence
9 report, the Court may accept those facts, including any prior
10 convictions, as correct and may rely on them in determining
11 your sentence.

12 You or your lawyer on your behalf may submit written
13 memoranda, motions or other materials such as character
14 letters before your sentencing hearing. The Government may as
15 well. Either party must submit any such materials to the
16 Court in Raleigh at least seven days before their sentencing
17 date.

18 After you are sentenced, the Government is limited
19 in most instances to one year within which to move for a
20 reduction of your sentence pursuant to Rule 35(b) by reason of
21 assistance you render to the Government. The Government is
22 not required to return to Court with a Rule 35(b) motion to
23 seek a reduction, and it is completely within the Government's
24 discretion whether to do so.

25 If the Government decides not to make a Rule 35(b)

1 motion on your behalf, you're entitled to relief from the
2 Court in very few exceptional circumstances. At sentencing
3 you should advise the Court whether the Government has made
4 any representations to you or your attorney that your future
5 cooperation may result in a Rule 35(b) motion.

6 If the Government does not make a Rule 35(b) motion
7 to seek a reduction in your sentence, the making of such a
8 motion will not extend, toll, or modify the one year time for
9 your filing a post-conviction sentence 2255 motion to vacate,
10 set aside, or correct your sentence.

11 Furthermore, the United States Attorney cannot
12 promise you that the Court will grant a Rule 35(b) motion, nor
13 can the United States Attorney promise you that law
14 enforcement officers will either accept or act on your offers
15 of cooperation.

16 If you are convicted, whether by a jury or as a
17 result of a guilty plea, you can appeal your conviction if you
18 believe that it was somehow unlawful or if there's some other
19 fundamental defect in the proceeding that you did not waive by
20 your guilty plea.

21 You also have a statutory right to appeal your
22 sentence under certain circumstances, particularly if you
23 think the sentence is contrary to law.

24 However, you may agree to waive certain appeal
25 rights both as to your conviction and sentence in your plea

1 agreement. The Court will go over any such appeal waivers
2 with you prior to you entering a plea.

3 Those appeal waivers are generally enforceable; but
4 if you believe the waiver is unenforceable or inapplicable,
5 you can present that theory to the Appellate Court.

6 With few exceptions, any Notice of Appeal must be
7 filed within 14 days of the judgment being entered in your
8 case.

9 If you're unable to pay the cost of an appeal, you
10 may ask the Court to waive those costs. If you so request,
11 the Clerk of Court will prepare and file a Notice of Appeal on
12 your behalf.

13 At this time I'm going to ask all of the defendants
14 as a group certain questions. Please listen carefully to my
15 questions because your answers will constitute a part of the
16 record of your plea.

17 If you wish to answer any question that I ask with a
18 "yes" please raise your hand and address the Court orally.

19 Counsel are admonished to take note of their
20 client's responses to my questions.

21 As to any defendant pleading guilty to a charge
22 contained in a criminal information, is there any such
23 defendant who has not discussed the matter of waiving his or
24 her right to indictment by the grand jury with his attorney?

25 (No hands raised.)

1 THE COURT: No hands have been raised.

2 Is there any defendant who does not understand his
3 or her right to indictment by a grand jury?

4 (No hands raised.)

5 THE COURT: No hands have been raised.

6 Is there any defendant who has been induced to waive
7 indictment by reason of any threat or promise?

8 (No hands raised.)

9 THE COURT: No hands have been raised.

10 Is there any attorney present representing a
11 defendant who intends to plead to an information who sees any
12 reason why his or her client should not waive indictment?

13 (No hands raised.)

14 THE COURT: No hands have been raised.

15 As to all defendants, is there any defendant who has
16 taken any drugs, medicine, pills, or consumed any alcoholic
17 beverages in the last 48 hours?

18 (No hands raised.)

19 THE COURT: No hands have been raised.

20 Is there any defendant who does not understand what
21 is happening here today?

22 (No hands raised.)

23 THE COURT: No hands have been raised.

24 Is there any defendant who needs or wishes to have
25 the indictment or information read to them for any reason?

1 (No hands raised.)

2 THE COURT: No hands have been raised.

3 Is there any attorney representing a defendant who
4 has any doubt or question about their client's competence to
5 plead at this time?

6 (No hands raised.)

7 THE COURT: No hands have been raised.

8 Is there any defendant who has not received a copy
9 of his or her indictment or information?

10 (No hands raised.)

11 THE COURT: No hands have been raised.

12 Is there any defendant who has not discussed his or
13 her case with their attorney?

14 (No hands raised.)

15 THE COURT: No hands have been raised.

16 Is there any defendant who is not completely and
17 fully satisfied with his or her attorney's services?

18 (No hands raised.)

19 THE COURT: No hands have been raised.

20 Is there any defendant who has any questions about
21 their rights to a jury trial or the other rights pertinent to
22 a jury trial or the consequences of pleading guilty that I
23 have just explained?

24 (No hands raised.)

25 THE COURT: No hands have been raised.

1 I've concluded explaining to each defendant their
2 right to a jury trial, other related rights and the Court will
3 now proceed to consider each matter on the calendar
4 individually.

5 **(Proceedings held in other matters.)**

6 * * *

7 THE COURT: The final matter on our docket today is
8 United States of America versus Toby Painter. Case Number
9 2:19-CR-19.

10 I'd like to ask counsel to identify themselves for
11 the record beginning with counsel for the United States.

12 MR. PUGH: Yes, Your Honor. Jake Pugh on behalf of
13 the United States.

14 MS. SHEA: Katherine Shea on behalf of Mr. Painter.

15 THE COURT: Good afternoon, counsel.

16 At this time I'd ask the clerk to please place the
17 defendant under oath.

18 (The defendant, Toby Painter, was duly sworn.)

19 THE COURT: Mr. Painter, do you understand that
20 because you've been placed under oath, your answers to my
21 questions are subject to the penalty of perjury or making a
22 false statement, and that you can be prosecuted if you do not
23 answer my questions truthfully?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Would you please state your name for the

1 record.

2 THE DEFENDANT: Toby Painter.

3 THE COURT: Mr. Painter, I have before me a form
4 labeled, "Consent to Proceed Before a United States Magistrate
5 Judge." It appears to bear your signature. Did you, in fact,
6 sign this form?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: The form reflects you consent to having
9 a United States Magistrate Judge conduct your plea proceedings
10 instead of a United States District Judge; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: The Court finds the defendant has
13 knowingly and voluntarily consented to having a United States
14 Magistrate Judge conduct his plea proceedings.

15 Mr. Painter, I'm going to ask you a few questions
16 today and talk to you a little bit more about your rights, and
17 then we'll go over the charges it appears you'll be pleading
18 guilty to, and we'll ask you how you plead. And we'll go from
19 there, depending on the answer to the question about your
20 plea.

21 So would you please tell me how old you are.

22 THE DEFENDANT: Thirty-two.

23 THE COURT: How far did you go in school?

24 THE DEFENDANT: I have my GED.

25 THE COURT: And you're able to speak and understand

1 English?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did you hear and understand the advice
4 of rights I went over with the defendants earlier today?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did you hear and understand the
7 questions that I asked the defendants earlier today?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Ms. Shea, do you believe your client is
10 competent to enter a plea?

11 MS. SHEA: Yes, Your Honor.

12 THE COURT: Any concerns with the Government
13 regarding the defendant's competency?

14 MR. PUGH: No, Your Honor.

15 THE COURT: Let the record reflect that based on the
16 Court's questioning of the defendant and his counsel, the
17 answers from the defendant and his counsel and the Court's
18 observations of the defendant, the Court finds the defendant
19 is competent to enter a plea in this matter.

20 Mr. Pugh, any crime victims in this case?

21 MR. PUGH: Yes, Your Honor. The victim has been
22 notified, and she's not participating today.

23 THE COURT: Thank you.

24 Now, Mr. Painter, you have the right to have the
25 indictment read to you in full, but you may waive that right

1 if you choose to do so. Would you like me to read the
2 indictment, or do you waive that right?

3 THE DEFENDANT: I waive it.

4 THE COURT: Thank you, sir.

5 Ms. Shea, do you anticipate that your client will be
6 pleading guilty to Count 5 of the indictment?

7 MS. SHEA: Yes, Your Honor.

8 THE COURT: So, Mr. Painter, what I'm going to do is
9 briefly review the nature of Count 5 and the maximum and the
10 minimum penalties associated with that count.

11 Count 5 charges you with enticement of a minor. The
12 minimum term of imprisonment for that offense is 10 years.
13 The maximum term of imprisonment is life. The minimum term of
14 supervised release is five years. The maximum term of
15 supervised release is life. The maximum term of imprisonment
16 upon supervised release -- the maximum term of imprisonment
17 upon revocation of supervised release is five years to life
18 imprisonment.

19 Upon revocation of supervised release, if you commit
20 a qualifying sex offense, otherwise not more than five years'
21 imprisonment upon revocation. The maximum fine would be
22 \$250,000. You would need to pay restitution if ordered by the
23 Court, a 100-dollar special assessment, and an additional
24 special assessment pursuant to 18 U.S.C., Section 3014 of
25 \$5,000.

1 Do you understand the nature of the charges against
2 you and the maximum and minimum penalties associated with that
3 charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And do you understand all the other
6 consequences of pleading guilty that I have mentioned today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did you hear and understand earlier
9 today when I explained your right to a jury trial and the
10 rights associated with a jury trial?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that if you plead
13 guilty and the Court accepts that plea, you'll be waiving
14 those trial rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you discussed with your attorney
17 the charge in the indictment to which you intend to plead
18 guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you understand that charge?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that in order to be
23 found guilty if you were to go to trial, the Government would
24 have to prove you guilty beyond a reasonable doubt using
25 competent evidence?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And have you spoken with your attorney
3 about sentencing?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: The Court advises you that in
6 determining your sentence, the Court must calculate the
7 applicable advisory guideline range, consider any departure or
8 variance motions, and consider the other factors under 18
9 U.S.C., Section 3553 in arriving at your sentence.

10 The Court also advises you that any estimates you
11 receive from your attorney or anyone else about what your
12 sentence will be are only estimates, and they're not binding
13 on the Court. It is the Court that retains the discretion to
14 impose the appropriate sentence on you.

15 The Court also advises you that any estimates from
16 your attorney or anyone else about what the advisory guideline
17 range will be or the outcome of any departure or variance
18 motions are only estimates, and they are not binding on the
19 Court.

20 Do you understand these facts associated with the
21 sentencing process?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has anyone threatened you in any way in
24 order to get you to plead guilty?

25 THE DEFENDANT: No, sir.

1 THE COURT: Has anyone made you any promises or
2 assurances in order to get you to plead guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: Now, you've entered into a plea
5 agreement with the United States; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Ms. Shea, do you have a signed copy?

8 MS. SHEA: Ours is not signed, Your Honor, but it is
9 identical.

10 THE COURT: Mr. Painter, I have the original plea
11 agreement before me. I've reviewed it. On page 8, which is
12 the final page, it appears to bear your signature. Did you,
13 in fact, sign the plea agreement?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Prior to signing the plea agreement, did
16 you read it and discuss all of its terms with your attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Does the plea agreement contain the
19 entirety of any agreement that you have with the United States
20 about how to resolve your case?

21 THE DEFENDANT: Say that again.

22 THE COURT: Sure. Does the plea agreement contain
23 the entire agreement you have with the United States about how
24 to resolve your case?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand each term in the plea
2 agreement?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Your plea agreement contains an
5 appellate waiver, and I want to review that with you. It's on
6 the first page of the plea agreement in paragraph 2(c).

7 It provides as follows: The defendant agrees to
8 waive knowingly and expressly the right to appeal the
9 conviction or whatever sentence is imposed on any ground,
10 including any appeal, pursuant to 18 U.S.C., Section 3742, and
11 further to waive any right to contest the conviction or the
12 sentence in any post-conviction proceeding, including any
13 proceeding under 28 U.S.C., Section 2255, excepting an appeal
14 or motion based upon grounds of ineffective assistance of
15 counsel or prosecutorial misconduct not known to the defendant
16 at the time of the defendant's guilty plea.

17 The foregoing appeal waiver does not constitute or
18 trigger a waiver by the United States of any of its rights to
19 appeal provided by law.

20 Do you understand the terms of that appeal waiver
21 and the rights you're giving up by entering into it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: With regard to sentencing, do you
24 understand that if you plead guilty and the Court accepts that
25 plea, the Court still has the ability to sentence you to the

1 maximum sentence allowed by law?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you understand that if the Court
4 did sentence you to the maximum sentence allowed by law, that
5 alone would not be a basis to withdraw your guilty plea?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that even at this
8 point, you still have the right to enter a not guilty plea and
9 persist in that plea?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that if you did enter
12 a not guilty plea, you would be entitled to a trial by jury
13 and enjoy all the trial rights I've discussed today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand if you enter a guilty
16 plea, a trial will not be held, and you'll have waived all of
17 your trial rights?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you answered all of my questions
20 truthfully today?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: In a moment I'm going to ask you how you
23 plead to Count 5, but first I want to review Count 5 and its
24 elements. It should be found on page 4 of the plea agreement.

25 Count 5, again, charges you with enticement of a

1 minor. In your case, the elements of that offense are that
2 beginning on or about December of 2017, and continuing through
3 on or about January 20th, 2018, in the Eastern District of
4 North Carolina, and elsewhere, you did knowingly use a
5 facility or means of interstate commerce; namely, the
6 internet, to persuade, induce, entice, and coerce an
7 individual under the age of 18 to engage in sexual activity,
8 you believed that the individual was less than 18 years of
9 age, and you could have been charged with a criminal offense
10 for engaging in the sexual activity; that is, under North
11 Carolina law second degree sexual exploitation of a child, and
12 under federal law, production of child pornography.

13 With respect to Count 5, Mr. Painter, how do you
14 plead?

15 THE DEFENDANT: Guilty.

16 THE COURT: Are you pleading guilty today of your
17 own free will because you are, in fact, guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And did you commit the offense charged
20 in the indictment?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Mr. Painter, you and your
23 attorney may be seated.

24 Would the Government please summarize what it
25 believes it would be able to show if this matter were to

1 proceed.

2 MR. PUGH: Yes, Your Honor.

3 On January 22nd, 2018, a guidance counselor at a
4 school in West Carrollton, Ohio discovered from another
5 student that a 14-year-old girl, VL, had been in communication
6 and sending nude photos to an adult male. The guidance
7 counselor informed VL's mother, who contacted the West
8 Carrollton Police Department. On VL's phone, investigators
9 found chat history with someone labeled as daddy, included
10 nude photographs of VL. VL provided the name Toby, and law
11 enforcement were able to identify the defendant, Toby Painter,
12 based on her Facebook contacts and photos exchanged on her
13 phone.

14 During an interview, VL stated that Painter sent her
15 a friend request through SnapChat in December of 2017. He
16 also communicated through TextNow, an app which allows free
17 texting and chats through the internet. She told him she was
18 14, and he told her that she [sic] was 29. They initially
19 talked about common interests, but then the conversation
20 turned to sex. She explained that Painter asked her to send
21 him nude photographs, and she sent him approximately 10 nude
22 photos of herself. He responded by sending photos of his
23 penis.

24 Law enforcement downloaded the TextNow application
25 and retrieved VL's chat history with Painter. On her phone's

1 media drive, they recovered roughly a dozen images of VL that
2 constituted child pornography, as well as three images that
3 appeared to depict Mr. Painter's penis. Local investigators
4 then referred the case to FBI.

5 FBI were able to confirm through administrative
6 subpoenas that the Facebook and TextNow accounts did belong to
7 Painter, and they linked his activity to an IP address of his
8 residence in Plymouth, North Carolina within this district.

9 They obtained the TextNow records showing
10 approximately 2,300 texts between Mr. Painter and VL. The
11 records do not include the photos, but they indicate where
12 photos had been attached. In using metadata timestamps and
13 the context, FBI was able to reassemble the conversations with
14 those in context.

15 As an example, on January 13th, 2018, Painter
16 encouraged VL to find an object to insert in her anus. They
17 discussed what object would be appropriate, and she eventually
18 sent him a text message containing a photo of herself exposing
19 her buttocks with what appeared to be a hairbrush inserted in
20 her anus. Similar conversations took place later in January,
21 and she did send images of herself that constituted child
22 pornography also on January 15th and on the 19th.

23 The conversation on January 17th is notable in that
24 VL receives a mirror selfie of Mr. Painter. She responds by
25 saying that she had been lying to her friends about his age,

1 and the next day she asked him. He confirmed that his actual
2 name is Toby. Their conversations end on January 20th, 2019.
3 On that day she receives additional texts from him that
4 depicts his penis.

5 This conduct does constitute production of child
6 pornography under federal law as well as second degree sexual
7 exploitation under North Carolina law.

8 THE COURT: Thank you.

9 Ms. Shea, any response to the Government's proffer?

10 MS. SHEA: No, Your Honor.

11 THE COURT: Mr. Painter, based upon the Government's
12 summary, your acknowledgment that you are, in fact, guilty as
13 charged in Count 5, your knowledge of your right to a trial,
14 your knowledge of the maximum and minimum penalties associated
15 with that charge, and because you're entering a voluntary
16 guilty plea, I will accept your guilty plea as to Count 5 and
17 enter a judgment of guilty based upon your plea.

18 Let the record reflect that the Court is satisfied
19 and finds as fact that the plea was freely and voluntarily
20 entered by the defendant. At the time it was entered, the
21 defendant was fully competent and had a full and complete
22 understanding of the nature of the charges against him and the
23 maximum and minimum penalties provided by law. The plea is
24 supported by an independent factual basis containing each of
25 the essential elements of the offense charged. Therefore, the

1 defendant's guilty plea is accepted by the Court, and he's
2 adjudged guilty on Count 5.

3 The Clerk of Court is directed to enter a not guilty
4 verdict as to all -- I'm sorry, not guilty plea as to all the
5 remaining counts. The Court anticipates dismissing those
6 counts at sentencing.

7 The Court hereby conditionally approves the
8 memorandum of plea agreement. This matter is set for
9 sentencing on November 2nd, 2020, here in Raleigh before Judge
10 Dever.

11 Immediately following the hearing, counsel for the
12 defendant shall contact the Probation Office to make
13 arrangements for the defendant's interview which should take
14 place at some point in the next three working days. Counsel
15 may be with the defendant at the interview.

16 The Probation Office will prepare a written
17 presentence report to aid the Court in sentencing.
18 Mr. Painter and his counsel will have the right to review and
19 object to the contents of the presentence report prior to the
20 sentencing hearing. At the sentencing hearing, Mr. Painter
21 and his attorney will be able to make statements, as will the
22 attorney for the Government, and any victims who wish to do
23 so.

24 Ms. Shea, it appears Mr. Painter is currently in
25 custody. Is he seeking release pending sentencing?

1 MS. SHEA: No.

2 THE COURT: Anything further, Ms. Shea?

3 MS. SHEA: No, Your Honor.

4 THE COURT: Anything further from the Government?

5 MR. PUGH: No, Your Honor.

6 THE COURT: All right. That concludes the
7 proceedings for Mr. Painter. He's remanded into the custody
8 of the U.S. Marshals, and we'll be in recess until 9:30
9 tomorrow morning.

10 * * *

11 (The proceedings concluded at 4:06 p.m.)

1 UNITED STATE DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3
4

5 CERTIFICATE OF OFFICIAL REPORTER
6

7 I, Amy M. Condon, CRR, RPR, CSR, Federal Official
8 Court Reporter, in and for the United States District Court
9 for the Eastern District of North Carolina, do hereby certify
10 that pursuant to Section 753, Title 28, United States Code,
11 that the foregoing is a true and correct transcript of the
12 stenographically reported proceedings held in the
13 above-entitled matter and that the transcript page format is
14 in conformance with the regulations of the Judicial Conference
15 of the United States.
16
17

18 Dated this 26th day of February, 2021.
19
20

21 /s/ Amy M. Condon
22 Amy M. Condon, CRR, CSR, RPR
23 U.S. Official Court Reporter
24
25